



The Office of Secretary of State

Brian P. Kemp
SECRETARY OF STATE

Vincent R. Russo
General Counsel

NOTICE (SEC-2011-09)

RE: Adoption of Chapter 590-4-1 entitled “General Provisions” Consisting of Rules 590-4-1-.01 through 590-4-1-.12

TO ALL INTERESTED PERSONS AND PARTIES:

Pursuant to the Official Code of Georgia Annotated, O.C.G.A. §§ 10-5-70 and 50-13-4, notice is hereby given that the Commissioner of Securities of the Office of the Georgia Secretary of State, (hereinafter “Commissioner”) proposes to adopt Chapter 590-4-1 entitled “General Provisions”. The proposed rules for adoption contained in Chapter 590-4-1 include the following: 590-4-1-.01 “Definitions”, 590-4-1-.02 “Delegation to Assistant Commissioner”, 590-4-1-.03 “Administrative Declaratory Rulings; No-Action Letters; Informal Interpretations; Fees”, 590-4-1-.04 “Petition for Adoption of Rules”, 590-4-1-.05 “Filing Date”, 590-4-1-.06 “Records”, 590-4-1-.07 “Confidentiality”, 590-4-1-.08 “Non-Payment of Statutory Fees or Penalties”, 590-4-1-.09 “Forms”, 590-4-1-.10 “Enforcement Procedures”, 590-4-1-.11 “Appointment of Investigative Agent, Examiner or Regulatory Monitor”, and 590-4-1-.12 “Criminal History Access and Confidential Law Enforcement Information”.

Attached with this notice is a synopsis and exact copy of each proposed rule to be adopted. The rules are being adopted under the authority of O.C.G.A. §§ 10-5-70 and 10-5-74. The Commissioner finds that the adoption of the attached rules is necessary and in the public interest as a result of the enactment of the Georgia Uniform Securities Act of 2008.

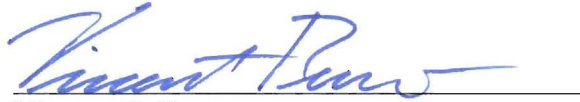
The Assistant Commissioner, in accordance with O.C.G.A. § 10-5-70(f), shall consider the adoption of the proposed rules at 9:45 a.m., on November 17, 2011, in Room 810, Suite 802 West Tower at 2 Martin Luther King, Jr. Drive, S.E., Atlanta, Georgia 30334.

Copies of this notice, including the synopsis and exact copy of each proposed rule, are available for review on the Securities Divisions’ web page at <http://www.sos.ga.gov/securities>. Interested persons may submit data, views or arguments in writing to the Commissioner. The Commissioner must receive all comments regarding the proposed adoption of the above-referenced Rules from interested persons no later than 5:00 p.m. on November 15, 2011. Written comments must be sent to: Commissioner of Securities, Securities Division, 2 Martin Luther King, Jr. Drive, S.E., 802 West Tower, Atlanta, Georgia 30334. Written comments may be sent

via facsimile to (404) 656-0513, or submitted electronically to SECRules@sos.ga.gov. Please reference "SEC-2011-09" on all comments.

For further information, please contact Tom Zagorsky at (404) 463-0344.

This 13th day of October, 2011.

A handwritten signature in blue ink, appearing to read "Vincent Russo", is written over a horizontal line.

Vincent R. Russo
Interim Assistant Commissioner of Securities

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-1-.01 ENTITLED
“DEFINITIONS” BY THE COMMISSIONER OF SECURITIES OF THE OFFICE OF
THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-1-.01 is to provide by rule for additional defined terms deemed necessary and proper for the enforcement of the Chapter 5 of Title 10, the Georgia Uniform Securities Act of 2008. Since the Georgia Securities Act of 1973 was repealed and the prior definitional rule pertained to the Georgia Securities Act of 1973, it is necessary to adopt this rule applicable to the Georgia Uniform Securities Act of 2008.

Main Features:

The new rule provides for the definition of additional terms necessary for the enforcement of the Georgia Uniform Securities Act of 2008. Some key terms included in proposed Rule 590-4-1-.01 include “associated person”, “branch office”, “offering”, “purchaser representative”, and “underwriter”.

Text of Rule:

590-4-1-.01 Definitions.

All definitions contained in Section 10-5-2 of the Official Code of Georgia Annotated (“Code” or “O.C.G.A.”) are incorporated by reference herein. When used in the Act and in these Rules, the following terms shall have the following meanings:

(1) “Accredited Investor” shall have the same meaning as set forth in Rule 501 of Regulation D under the SEC’s general rules and regulations adopted pursuant to the Securities Act of 1933, 17 C.F.R. § 230.501.

(2) “Act” or “The Act” means the Georgia Uniform Securities Act of 2008, as amended, as set forth in Chapter 5 of Title 10 of the Official Code of Georgia Annotated.

(3) “Affiliate of” or “Person affiliated with” means a person who directly, or indirectly through one (1) or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(4) “Aggregate Offering Price” means the sum of all cash, services, property, notes, cancellation of debt, and other consideration received by an issuer for issuance of its securities. Where securities are being offered for both cash and non-cash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time or, in the absence of sales, on the fair value as determined by an accepted standard.

(5) “APA” means the Georgia Administrative Procedure Act, as set forth in Chapter 13 of Title 50 of the Official Code of Georgia Annotated.

(6) “Applicant” means the issuer, broker-dealer, investment adviser, investment adviser representative, agent, or other person executing the application.

(7) “Assistant Commissioner” means the Assistant Commissioner of Securities of the State of Georgia.

(8) “Associated person” means any partner, officer, director, branch manager (or any person occupying a similar status or performing similar functions) of a broker-dealer or investment adviser, any person directly or indirectly controlling, controlled by, or under common control with such broker-dealer or investment adviser, or any employee of such broker-dealer or investment adviser, except that any person associated with a broker-dealer or investment adviser whose functions are solely clerical or ministerial shall not be included in the meaning of such term.

(9) “Branch office” means any location where one (1) or more associated persons of a broker-dealer or investment adviser regularly conducts the business of effecting any transactions in any security, advising with respect to any security, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, excluding the following:

(a) Any location that is established solely for customer service or administrative/clerical functions, or both, where no sales activities are conducted and that is not held out to the public as a branch office.

(b) Any location that is the associated person’s primary residence, provided the following:

1. Only one (1) associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at that location;

2. The location is not held out to the public as an office, and the associated person does not meet with customers at that location;

3. Neither customer funds nor securities are handled at that location;

4. The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by such associated person;

5. The associated person’s correspondence and communications with the public are subject to the firm’s supervision in accordance with NASD Rule 3010 as found in the FINRA Manual;

6. Electronic communications (e.g., emails) are made through the broker-dealer’s or investment adviser’s electronic system;

7. All orders are entered through the designated branch office or an electronic system established by the broker-dealer that is reviewable at the branch office;

8. Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the broker-dealer or investment adviser; and

9. A list of residence locations is maintained by the broker-dealer or investment adviser.

(c) Any location, other than a primary residence, that is used for securities business for less than thirty (30) business days in any one (1) calendar year, provided that the broker-dealer or investment adviser complies with the provisions set forth in clauses (b)(1)-(9) above.

(d) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, that is not held out to the public as an office. Where such office of convenience is located on bank premises, signage necessary to comply with applicable federal and state laws, rules, and regulations and applicable rules and regulations of the New York Stock Exchange, other self-regulatory organizations, and securities and banking regulators may be displayed and shall not be deemed "holding out" for purposes of this Rule.

(e) Any location that is used primarily to engage in non-securities activities and from which the associated person or persons effects no more than twenty-five (25) securities transactions in any one (1) calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the associated person or persons conducting business at the non-branch locations are directly supervised.

(f) The floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers.

(g) A temporary location established in response to the implementation of a business continuity plan.

Notwithstanding the exclusions in this Rule, any location that is responsible for supervising the activities of persons associated with the broker-dealer or investment adviser at one (1) or more non-branch locations of the broker-dealer or investment adviser is considered to be a branch office.

(10) "Business Day" shall mean any day other than Saturday, Sunday or other day on which the office of the Secretary of State is authorized or required by law, regulation or order to close. The term "business day" as used in this Rule shall not include any partial business day provided that the associated person spends at least four (4) hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

(11) “The Commissioner” or “Commissioner” means the Commissioner of Securities of the State of Georgia. For the purpose of the Rules, the term Commissioner includes the Assistant Commissioner and any other individuals delegated to act on behalf of the Commissioner or Assistant Commissioner.

(12) “CRD” means the Central Registration Depository as maintained by FINRA.

(13) “Division” means the Securities Division of the office of the Secretary of State.

(14) “FINRA” means the Financial Industry Regulatory Authority, Inc.

(15) “IARD” means the Investment Adviser Registration Depository as maintained by FINRA.

(16) “Initiation of Proceedings” or “Order for Proceedings” shall mean any:

(a) Summary order issued under Code Sections 10-5-13(a), 10-5-25, or 10-5-41;

(b) Ex parte order issued under Code Section 10-5-73; or

(c) Notice of hearing issued at the instance of the Commissioner.

(17) “NASAA” means the North American Securities Administrators Association, Inc.

(18) “National Securities Association” means an association registered with the SEC under Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. § 78o-3).

(19) “National Securities Exchange” means an exchange registered with the SEC under Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. § 78f).

(20) “Net Liquid Capital” means net capital as defined in SEC Rule 15c3-1(c)(2) (17 C.F.R. § 240.15c3-1(c)(2)) under the Securities Exchange Act of 1934.

(21) “Offering” means any or all offers and sales of securities by an issuer that are integrated and considered as part of a single offering of securities by such issuer. Offers and sales that are made more than six (6) months before the start of a putative offering under Code Section 10-5-11(14) or are made more than six (6) months after completion of such putative offering will not be considered part of that offering, so long as during those six (6) month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under Code Section 10-5-11(14), other than those offers or sales of securities under an employee benefit plan as defined in SEC Rule 405 (17 C.F.R. 230.405) under the Securities Act of 1933. If the issuer offers or sells securities within either of the six (6) month periods, the determination as to whether separate sales of securities are part of the same offering depends on the particular facts and circumstances of the sales, including the following:

(a) Whether the sales are part of a single plan of financing,

- (b) Whether the sales involve issuance of the same class of securities,
- (c) Whether the sales have been made at or about the same time,
- (d) Whether the same type of consideration is received, and
- (e) Whether the sales are made for the same general purpose.

(22) “Office of Supervisory Jurisdiction” means any office of a broker-dealer at which any one (1) or more of the following functions takes place:

- (a) Order execution or market making, or both.
- (b) Structuring of public offerings or private placements.
- (c) Maintaining custody of customers’ funds or securities, or both.
- (d) Final acceptance (approval) of new accounts on behalf of the broker-dealer.
- (e) Review and endorsement of customer orders.
- (f) Final approval of advertising or sales literature for use by persons associated with the broker-dealer, except for an office that solely conducts final approval of research reports.
- (g) Responsibility for supervising the activities of persons associated with the broker-dealer at one (1) or more other branch offices of the broker-dealer.

(23) “Officer” means, without limitation, the chief executive officer, president, vice president, secretary, and treasurer of a corporation, managing member of a limited liability company, managing partners of a partnership, or the equivalent positions in another type of business organization.

(24) “Order” or “Consent Order” includes, but is not limited to, an administrative order issued under these Rules or a similar order issued by a court of competent jurisdiction, any federal, foreign, or state agency, or a self-regulatory organization that makes a finding that state or federal securities laws have been violated and sanctions administered.

(25) “Purchaser Representative” means any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

(a) Is not an affiliate, director, officer, or other employee of the issuer, or beneficial owner of ten percent (10%) or more of any class of the equity securities or ten percent (10%) or more of the equity interest in the issuer, except where the purchaser is a:

1. Relative of the purchaser representative by blood, marriage, or adoption and not more remote than a first cousin;

2. Trust or estate in which the purchaser representative and any person related to the purchaser as specified in item 1, collectively, have more than fifty percent (50%) of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any similar capacity; or

3. Corporation or other organization of which the purchaser representative and any persons related to the purchaser as specified in item 1 or 2, collectively, are the beneficial owners of more than fifty percent (50%) of the equity securities (excluding directors' qualifying shares) or equity interests.

(b) Has the knowledge and experience in financial and business matters such that the person is capable of evaluating, either alone, together with other purchaser representatives of the purchaser, or together with the purchaser, the merits and risks of the prospective investment.

(c) Is acknowledged by the purchaser, in writing, during the course of the specific transaction, to be the purchaser's purchaser representative in connection with evaluating the merits and risks of the specific prospective investment.

(d) Discloses to the purchaser, in writing, prior to the acknowledgment specified in clause (c), any material relationship between himself or herself or his or her affiliates and the issuer or its affiliates that then exist, is mutually understood to be contemplated, or has existed at any time during the previous two (2) years, and any compensation received or to be received as a result of the relationship.

(26) "Rule" or "the Rules" means the rules as they appear in the "Official Compilation Rules and Regulations of the State of Georgia" as compiled and printed by the Secretary of State pursuant to the Georgia Administrative Procedure Act, Code Section 50-13-1 et seq.

(27) "Sales and Advertising Literature" means any advertisement; pamphlet; circular; letter; article; communication published in any newspaper, magazine or periodical; script of any recording, radio or television announcement or broadcast; sales-kit; pitch-book; film clip; or other communication through facsimile or other electronic means used or proposed to be used in connection with any offering of securities.

(28) "SEC" means the United States Securities and Exchange Commission.

(29) "Secretary of State" means the Secretary of State of the State of Georgia.

(30) "Securities Act of 1933" means the Securities Act of 1933, 15 U.S.C. § 77a et seq., as amended.

(31) "Securities Exchange Act of 1934" means the Securities Exchange Act of 1934, 15 U.S.C. § 78f et seq., as amended.

(32) “Underwriter” means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of such an undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors’ or sellers’ commission.

(33) “Willfully” or “Willful” means intentionally committing the act that constitutes the violation. There is no requirement that the actor also be aware that he, she, or it is violating the Act or Rules.

Authority: O.C.G.A. Secs. 10-5-2, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-1-.02 ENTITLED
“DELEGATION TO ASSISTANT COMMISSIONER”BY THE COMMISSIONER OF
SECURITIES OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-1-.02 is to provide by rule for the delegation of the Commissioner’s authority to the Assistant Commissioner, as contemplated under the Georgia Uniform Securities Act of 2008.

Main Features:

The Assistant Commissioner is provided the authority granted the Commissioner and may act concurrently with the Commissioner.

Text of Rule:

590-4-1-.02 Delegation to Assistant Commissioner.

The Assistant Commissioner is empowered to sign all documents, make all decisions and perform all acts under the Act as is the Commissioner. This power is to be exercised by the Assistant Commissioner concurrently with the Commissioner, and all acts of the Assistant Commissioner are of the same force and effect as such acts would be if performed by the Commissioner.

Authority: O.C.G.A. Sec. 10-5-70(f).

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-1-.03 ENTITLED
“ADMINISTRATIVE DECLARATORY RULINGS; NO-ACTION LETTERS;
INFORMAL INTERPRETATIONS; FEES” BY THE COMMISSIONER OF
SECURITIES OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-1-.03 is to provide by rule for procedures pertaining to declaratory rulings, no-action requests, and informal interpretations by the Commissioner.

Main Features:

The main features of this rule include the items that must be included for a valid petition for declaratory ruling or request for a no-action letter. The Commissioner will not issue a declaratory ruling or a no-action letter with regard to hypothetical situations or questions, as further described in the rule. Additionally, the Commissioner will charge a fee for declaratory rulings and no-action letters; however, no fee will be assessed for informal interpretations.

Text of Rule:

590-4-1-.03 Administrative Declaratory Rulings; No-Action Letters; Informal Interpretations; Fees.

(1) Declaratory Rulings.

(a) Availability. Any person whose legal rights will be adversely impacted or impaired by the application of any statutory provision or any rule or order of the Commissioner may petition the Commissioner and request a declaratory ruling thereon. The Commissioner will not render advisory opinions, resolve questions that have become moot or are abstract or hypothetical, or otherwise act hereunder except with respect to such actual controversies or other cases that the Commissioner deems to be in the public interest, which shall be consistent with Code section 50-13-11.

(b) Form of Petition. Each such petition shall be filed with the Commissioner in writing and shall state:

1. The name and mailing address of the petitioner;
2. The full text of the statute, rule, or order upon which a ruling is requested;
3. A statement of all pertinent and existing facts necessary to a determination of the applicability of the quoted statute, rule, or order;
4. The petitioner's contention, if any, as to the aforesaid applicability with citation of legal authorities, if any, that authorizes, supports, or requires a decision in accordance therewith; and

5. A statement setting forth in detail the petitioner's interest in the matter and why and how the petitioner is uncertain or insecure with respect to his, her, or its rights. The petition shall be executed by the petitioner, or on behalf of the petitioner by a person legally authorized to represent the petitioner.

(c) Proceedings on Petition. If the Commissioner determines that a decision can be rendered on the face of the petition without further proceedings, he or she shall render a summary decision thereon. Otherwise, all parties known by the Commissioner to have a legal interest in the matter shall be notified and given an opportunity to be heard in a manner determined by the Commissioner.

(d) Fees. Prior to granting any petition for declaratory ruling, a fee in the amount of \$500.00 shall be paid to the Commissioner if the Commissioner determines that a decision can be rendered on the face of the petition without further proceedings. If a hearing on the petition is required, a reasonable charge will be assessed for the costs incurred.

(2) No-Action Letters.

(a) Availability. Any person may request in writing a statement from the Commissioner's staff that, on the basis of the facts stated in such written request, the staff would not recommend enforcement action. The Commissioner's staff will not respond to requests related to unnamed companies or persons or to hypothetical situations.

(b) Form of No-Action Request. Each such no-action request shall be filed with the Commissioner in writing and shall:

1. State the specific subsection of the particular statute, rule, or order to which the request pertains;
2. Provide the names of the company or companies or individual(s) and all other persons involved;
3. Limit the request to the particular situation involving the problem at hand and not attempt to include every possible type of situation that may arise in the future;
4. State concisely and to the point all of the facts necessary to reach a conclusion in the matter; and
5. Indicate why the requesting party thinks a problem exists, indicate the requesting party's opinion in the matter, and indicate the basis for the requesting party's opinion.

(c) Fees. A no-action request shall not be considered unless the request filed with the Commissioner is accompanied by a fee in the amount of \$250.00.

(3) Informal Interpretations. The Commissioner, at his/her discretion, may issue informal interpretations, which shall be intended as general guidance and not to be relied on as definitive.

Authority: O.C.G.A. Secs. 10-5-70, 10-5-74, 50-13-11.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-1-.04 ENTITLED
“PETITION FOR ADOPTION OF RULES” BY THE COMMISSIONER OF
SECURITIES OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-1-.04 is to provide by rule for procedures pertaining to petitioning the Commissioner for the adoption of administrative rules and regulations.

Main Features:

The main features of this rule include the information required to be included in a petition for the adoption of rules, including the full text of the rule to be repealed or promulgated, a statement of the reason for such action, and a citation to legal authorities authorizing and supporting the requested action. Within thirty days from the date of the submission, the Commissioner will take action accordingly.

Text of Rule:

590-4-1-.04 Petition for Adoption of Rules.

(1) Form of Petition. Each petition for adoption of rules made pursuant to the Georgia Administrative Procedure Act shall be filed with the Commissioner in writing and shall state:

- (a) The name, address, telephone number and email address of the petitioner;
- (b) The full text of the rule requested to be amended or repealed or the full text of the rule desired to be promulgated;
- (c) A statement of the reason the rule should be amended, repealed or promulgated, including a statement of all pertinent existing facts concerning the petitioner’s interest in the matter; and
- (d) Citations to legal authorities, if any, that authorize, support, or require the action requested by the petitioner. The petition shall be executed by the petitioner or on behalf of the petitioner by a person legally authorized to represent the petitioner.

(2) Proceeding on petition. Within thirty (30) days after the submission of a petition, the Commissioner shall either deny the petition in writing, stating his or her reasons for the denial, or initiate rule-making proceedings in accordance with Code Section 50-13-4.

Authority: O.C.G.A. Secs. 10-5-70, 50-13-9.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-1-.05 ENTITLED
“FILING DATE” BY THE COMMISSIONER OF SECURITIES OF THE OFFICE OF
THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-1-.05 is to provide by rule for the date upon which any filing made under the Georgia Uniform Securities Act of 2008 will be considered filed by the Commissioner.

Main Features:

The main feature of this rule is that the Commissioner will not consider any filing as officially filed until all forms and fees are received by the Commissioner.

Text of Rule:

590-4-1-.05 Filing Date.

An application, notice, or report under the Act shall not be considered filed until all required forms and fees are received by the Commissioner.

Authority: O.C.G.A. Secs. 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-1-.06 ENTITLED
“RECORDS” BY THE COMMISSIONER OF SECURITIES OF THE OFFICE OF THE
GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-1-.06 is to provide by rule for the retention or destruction of certain records filed with the Commissioner or obtained by the Commissioner during an investigation. The rule further provides for the electronic filing and retention of records, including the classification of electronic records as electronic records. Additionally, the proposed rule provides for the use of electronic signatures of the Commissioner and Assistant Commissioner.

Main Features:

The main feature of this rule is the retention of records filed with the Commissioner in original form or by electronic means so long as the records may be reproduced. Records provided during the course of an investigation may be destroyed by the Commissioner once the investigation is closed if a demand for return is not made at the time the records are produced. Additionally, the Commissioner and Assistant Commissioner may use electronic signatures on any document to which the Commissioner or Assistant Commissioner has authority to affix his or her manual signature. The Commissioner may certify public records or issue a certification that a public record does not exist, and the cost for certified records or a certificate of nonexistence is \$30.00.

Text of Rule:

590-4-1-.06 Records.

(1) All applications, records, correspondence, reports, and other documents filed with the Commissioner pursuant to the various provisions of the Act may be maintained in original form or by means of microfilm, microfiche, micro-photographic reproduction, photographic reproduction, electronic imaging, word processing, computerization, or other acceptable reproductive methods.

(2) All books, records, correspondence, reports, or other documents produced pursuant to a subpoena, an order, or a notice to produce issued by the Commissioner may be destroyed by order of the Commissioner once the investigative file is closed if a demand for return is not made by the person producing such records at the time he, she, or it produces the records.

(3) Any photographic, electronic image, micro-photographic, or computer reproduction of any original writing or record filed with, or maintained by, the Commissioner, the CRD or IARD systems, or other filing depository designated by the Commissioner, shall be deemed to have been made in the regular course of business.

(4) Electronic Signatures.

(a) The Commissioner may direct his or her staff to affix his or her electronic signature to any document to which the Commissioner has the authority to affix his or her manual signature. Such electronic signature shall be of the same force and effect as the Commissioner's manual signature.

(b) The Assistant Commissioner may direct the Commissioner's staff to affix his or her electronic signature to any document to which the Assistant Commissioner has the authority to affix his or her manual signature. Such electronic signature shall be of the same force and effect as the Assistant Commissioner's manual signature.

(5) The Commissioner shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. The fee for furnishing a copy of a record that is a public record shall be in an amount consistent with Code Section 50-18-71. The fee for certification of a public record or certification that a public record does not exist shall be \$30.00.

Authority: O.C.G.A. Secs. 10-5-70, 10-5-74, 10-5-75, 50-18-72.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-1-.07 ENTITLED
“CONFIDENTIALITY” BY THE COMMISSIONER OF SECURITIES OF THE OFFICE
OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-1-.07 is to provide by rule for the confidentiality of investigations and investigative proceedings, further provide the Commissioner with authority to disclose certain records to other law enforcement entities, and identify the process for other law enforcement entities to request records from the Commissioner.

Main Features:

The main features of this rule include providing the Commissioner discretion to make investigations and investigative proceedings public and the requirement of an access letter to be provided by law enforcement agencies seeking records from the Commissioner.

Text of Rule:

590-4-1-.07 Confidentiality.

(1) All investigations and investigative proceedings shall be private, unless the Commissioner determines that the protection of the public requires that all or part of an investigation or investigative proceeding be made public.

(2) Any securities agency or law enforcement agency receiving information or documents pursuant to Code Section 10-5-77 must make the representation required by that Code Section in the form of an access letter. The access letter shall be addressed to the Commissioner and signed by someone at the requesting agency in a position to guarantee the aforementioned representation. Access letters and the Commissioner’s response shall be deemed part of an investigative file and shall be confidential.

(3) The Commissioner may disclose information or documents obtained in connection with an investigation under the Act to the extent provided in the Act and these Rules. The Commissioner may further disclose such information if disclosure is for the purpose of a civil, administrative, or criminal investigation or proceeding. Any securities agency or law enforcement agency receiving such information or documents must represent that, under the applicable law, protections exist to preserve the integrity, confidentiality, and security of the information.

(4) Notices, administrative orders and public notices and investor alerts issued by the Commissioner shall constitute public information under the Act and these Rules.

Authority: O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-76, 10-5-77.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-1-.08 ENTITLED
“NON-PAYMENT OF STATUTORY FEES AND PENALTIES” BY THE
COMMISSIONER OF SECURITIES OF THE OFFICE OF THE GEORGIA
SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-1-.08 is to provide by rule for certain consequences related to the non-payment of fees and penalties owed to the Commissioner, including where the non-payment is the result of a dishonored bank check.

Main Features:

No registration, renewal, filing or administrative penalty is deemed received unless accompanied with the appropriate payment. The Commissioner may suspend, revoke or deny any registration, renewal or filing if payment is made with a check which is dishonored. If the Commissioner receives payment within fifteen days from notice of the order suspending, revoking or denying the registration, renewal or other filing, the Commissioner will issue an order reinstating the effectiveness of the registration, renewal or filing.

Text of Rule:

590-4-1-.08 Non-Payment of Statutory Fees or Penalties.

(1) No registration, renewal, filing or administrative penalty required pursuant to the Act or any Rule shall be considered officially received by the Commissioner unless accompanied by the required fee or payment.

(2) If a check submitted in payment of a fee is dishonored, the registration, renewal or filing shall be immediately suspended, revoked or denied by order of the Commissioner. Upon entry of the order, the Commissioner shall promptly notify the issuer, applicant, registrant, or filer that the order has been issued and the reasons therefore. The person against whom the order is entered shall have fifteen (15) days from the date of notice to pay the required fee or funds. If such payment is not made, the Commissioner may initiate enforcement proceedings. If payment is received by the Commissioner, or a person designated by him within fifteen (15) days from notice of the order, the Commissioner shall issue an order reinstating the effectiveness of the registration, renewal or filing; provided, however, that no registration, renewal or filing shall become effective until the required fee is paid and all other deficiencies are cleared.

(3) Any persons subject to an order issued pursuant to this Rule shall have notice of opportunity for hearing.

(4) The Commissioner may vacate or modify an order issued pursuant to this Rule if he or she finds that the conditions that prompted its entry have changed or that it is otherwise in the public interest to do so.

(5) The provisions of this Rule shall apply to any administrative penalty or fine required to be paid to the Commissioner as a result of sanctions imposed pursuant to Code Section 10-5-73.

(6) Any offer to sell or sale of securities that occurred while a registration, renewal or filing was subject to an order prohibiting the offer or sale of such securities shall be subject to the sanctions provided for in the Act and the Rules promulgated thereunder.

(7) In the event that a civil penalty is imposed upon any person pursuant to Code Section 10-5-73, the Commissioner may, to collect such civil penalty, act under any or all of the following paragraphs:

(a) In addition to any other method provided by law for the collection of civil penalties imposed pursuant to Code Section 10-5-73, if any civil penalty imposed by the Commissioner pursuant to Code Section 10-5-73 is not paid within ten (10) days after notice and demand from the Commissioner, the Commissioner may notify the Attorney General for the purpose of initiating appropriate proceedings to collect such penalty.

(b) In aid of collection or execution, the Commissioner may do either, or both, of the following:

1. Examine any person, including the person liable, by taking depositions or propounding interrogatories as provided in the Georgia Civil Practice Act, Chapter 11 of Title 9 of the Official Code of Georgia; or

2. Compel the production of documents or other items as provided in the Georgia Civil Practice Act, Chapter 11 of Title 9 of the Official Code of Georgia.

Authority: O.C.G.A. Secs. 10-5-70, 10-5-73.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-1-.09 ENTITLED
“UNIFORM FORMS” BY THE COMMISSIONER OF SECURITIES OF THE OFFICE
OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-1-.09 is to provide by rule for the use of certain uniform forms accepted by other jurisdictions. By accepting certain uniform forms, the Commissioner can further promote a uniform exemption from registration for small issuers and taking other steps to reduce the burden of raising investment capital by small businesses. Furthermore, it will help to develop greater common systems and procedures among our federal and state counterparts.

Main Features:

The main features of this rule include the list of uniform forms that the Commissioner will accept in lieu of the requisite Georgia form.

Text of Rule:

590-4-1-.09 Uniform Forms.

(1) The following "Uniform Forms", as amended from time to time, are prescribed for use under the Act and Rules in lieu of the requisite Georgia form, if any.

- (a) U-1. Uniform Application to Register Securities.
- (b) U-2. Uniform Consent to Service of Process.
- (c) U-2A. Uniform Form of Corporate Resolution.
- (d) U-4. Uniform Application for Securities Industry Registration or Transfer.
- (e) U-5. Uniform Termination Notice for Securities Industry Registration.
- (f) ADV. Uniform Application for Investment Adviser Registration.
- (g) BD. Uniform Application for Broker-Dealer Registration.
- (h) USR-1. Investment Company Report of Sales.
- (i) U-7. Small Company Offerings Registration Form, may be used as a disclosure guide when making a small company offering of securities pursuant to an exemption under the Act or when making small public offerings pursuant to the Act.
- (j) NF. Uniform Investment Company Notice Filing.

(k) Model Accredited Investor Exemption Uniform Notice of Transaction.

(l) BR. Uniform Branch Office Registration Form.

(m) ADV-W. Notice of Withdrawal from Registration as Investment Adviser.

(n) BDW. Uniform Request for Withdrawal from Registration as a Broker-Dealer.

(o) D. Notice of Sales of Securities pursuant to SEC Regulation D.

Authority: O.C.G.A. Secs. 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-1-.10 ENTITLED
“ENFORCEMENT PROCEDURES” BY THE COMMISSIONER OF SECURITIES OF
THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-1-.10 is to provide by rule for certain enforcement procedures. Rule 590-4-1-.10 details the discretionary use of Formal Orders of Investigation, the use of Referrals and Emergency Orders, and the appointment of an auditor, examiner, or regulatory monitor.

Main Features:

The Commissioner may issue an emergency order if he/she deems the public health, safety, or welfare requires emergency action, the emergency order is issued pursuant to O.C.G.A. §§ 10-5-13, 10-5-25, 10-5-41, 10-5-73 or 10-5-74, or a judgment or statute requires the order to be issued without the right to a hearing. Where an emergency order is required to protect the public health, safety or welfare, the Commissioner is required to incorporate a finding that the public health, safety or welfare requires such action in an emergency order and immediately institute the necessary proceedings. Additionally, the Commissioner may appoint an auditor, examiner or regulatory monitor where necessary and assess the costs associated with such appointment accordingly. Where a report of investigation is filed with the Commissioner, the Commissioner may accept or reject the report. If the report is accepted, it shall be filed in the public records of the Commissioner. Furthermore, the Rule provides that a formal order of investigation commencing an investigation within or outside this State may be issued at any time based on a complaint, referral, tip or other information and belief; however, a formal order of investigation is not necessary to commence such an investigation.

Text of Rule:

590-4-1-.10 Enforcement Procedures.

(1) Formal Orders of Investigation. The Commissioner may, at any time, whether based upon a complaint, referral, tip or other information and belief, issue a formal order of investigation that shall commence such public or private investigation within or outside this State, as he or she deems necessary, to determine whether any person has violated or is about to violate the Act or any Rule, Regulation, or order created under the Act or to aid in the enforcement of the Act or in the prescribing of Rules and Regulations thereunder. However, a formal order of investigation is not necessary for the Commissioner to commence an investigation.

(2) Referrals. The Commissioner may, at any time, whether by complaint or otherwise, or based on information or belief, transmit a civil or criminal referral investigative report and evidence of violations of the Act to any federal or state regulator, prosecutor or other appropriate

law enforcement agency for the purpose of instituting any necessary civil or criminal proceedings.

(3) Appointment of an auditor, examiner, or regulatory monitor. In addition to those administrative sanctions the Commissioner may impose pursuant to Code Section 10-5-73, the Commissioner may issue an order for the appointment of an individual qualified by education and experience as an auditor, examiner, or regulatory monitor and assess the costs incurred to the person or entity that is the subject of the audit, examination or regulatory monitoring.

(4) Report of Examination or Inspection. The Commissioner, within his or her sole discretion, may accept or reject such examination or inspection, in whole or in part. If the report is accepted, the Commissioner shall file said report in the public records of the Commissioner. The Commissioner may, within his or her sole discretion, accept or reject, in whole or in part, the recommendations of the independent examiner.

(5) Emergency Orders. Notwithstanding any other provision of the Act or the Rules, an emergency order under this Rule is effective on the date of issuance, provided that:

(a) The Commissioner deems that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the emergency order, in which case the order may be effective immediately pending proceedings. The proceedings shall be promptly instituted;

(b) The order is issued pursuant to Sections 10-5-13, 10-5-25, 10-5-41, 10-5-73 or 10-5-74 of the Act; or

(c) The order is expressly required, by a judgment or a statute, to be made without the right to a hearing or continuance of any type.

Upon issuance of the order, the Commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any administrative sanction(s) that the Commissioner will seek, a statement of the reasons for the order, and notice that, upon the request by any respondent named in the emergency order, a hearing will be promptly scheduled. If a person subject to the order does not request a hearing, and the Commissioner orders no hearing within thirty (30) days after the date of service of the order, the order shall become final as to that person by operation of law. If a hearing is requested by any person subject to the emergency order, or is ordered by the Commissioner, after notice and opportunity for hearing has been served upon each person subject to the emergency order, the Commissioner may modify, vacate, or extend the emergency order any time prior to a final determination.

Authority: O.C.G.A. Secs. 10-5-70, 10-5-71.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-1-.11 ENTITLED
“APPOINTMENT OF INVESTIGATIVE AGENT, EXAMINER OR REGULATORY
MONITOR” BY THE COMMISSIONER OF SECURITIES OF THE OFFICE OF THE
GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-1-.11 is to provide by rule for the appointment of an investigative agent, examiner, or regulatory monitor.

Main Features:

The main features of this rule include the requirement that the investigative agent, examiner or regulatory monitor possess the necessary skills to perform the work that said individual is appointed to perform. The order appointing any such individual must contain the compensation arrangement for the appointed individual, and the appointee can only be appointed for up to twelve consecutive months. Upon conclusion of the appointment, the individual or firm must submit a written report to the Commissioner, and the failure to do so may result in disqualification from future appointments.

Text of Rule:

590-4-1-.11 Appointment of Investigative Agent, Examiner or Regulatory Monitor.

(1) In the case of any investigation or examination conducted under Code Section 10-5-71, the Commissioner may appoint an investigative agent, examiner or regulatory monitor to conduct the investigation or examination who shall have the powers and authority granted by the Commissioner.

(2) An investigative agent, examiner or regulatory monitor must possess the necessary investigative, legal, accounting or financial skills and expertise to properly analyze the evidence, prepare and present a comprehensive report, and follow through until completion of the assigned task. The investigative agent, examiner or regulatory monitor must certify that he or she does not have, nor is there a perception that he or she may have, a professional conflict of interest in the matter to be investigated. The Commissioner, in his or her sole discretion, shall determine the qualifications of an investigative agent, examiner or regulatory monitor.

(3) Unless otherwise indicated in the order, supervision of the investigative agent is vested in the Commissioner or his or her designee.

(4) An investigative agent, examiner or regulatory monitor shall be appointed by order under the appropriate Code Section. The order shall generally identify the matter, the persons to be investigated, the qualifications of the individual appointed as investigative agent, procedures for

securing subpoenas, and reporting requirements. The order shall also establish the rate of compensation and invoicing and billing procedures.

(5) An investigative agent, examiner or regulatory monitor shall serve for a period of up to twelve (12) months. The period of appointment may be shortened or extended by the Commissioner as circumstances require.

(6) In any case where investigations or examinations are conducted by an investigative agent, examiner or regulatory monitor, he or she shall submit to the Commissioner a written report, including the transcript of the testimony in evidence (if requested by the Commissioner), the findings and recommendations of the action to be taken by the Commissioner. The recommendation of the agent may be approved, modified, or disapproved by the Commissioner. The Commissioner may direct an investigative agent or examiner to conduct further investigation, take additional testimony or acquire further documentary evidence as may be necessary and appropriate. Failure to submit the written report may disqualify the appointed individual or firm from any future appointment as an investigative agent, examiner or regulatory monitor.

Authority: O.C.G.A. Secs. 10-5-70, 10-5-71.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-1-.12 ENTITLED
“CRIMINAL HISTORY ACCESS AND CONFIDENTIAL LAW ENFORCEMENT
INFORMATION” BY THE COMMISSIONER OF SECURITIES OF THE OFFICE OF
THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-1-.12 is to provide by rule for the authorization of certain investigators and other employees authorized by the Commissioner to access criminal history files maintained by state or federal law enforcement agencies.

Main Features:

The main features of this rule include the requirement that investigators be certified by the Georgia Peace Officers Standards and Training Council and the Commissioner authorize any other employees accessing criminal information. Additionally, the rule requires the information to be kept confidential unless otherwise provided for by the Commissioner.

Text of Rule:

590-4-1-.12 Criminal History Access and Confidential Law Enforcement Information.

(1) The Commissioner’s investigators who are certified as peace officers by the Georgia Peace Officers Standards and Training Council or other employees authorized by the Commissioner may request access to criminal history files maintained by any state or federal law enforcement agency.

(2) Criminal history information that the Commissioner’s investigators obtain from state or federal law enforcement agencies shall be securely maintained by the Commissioner and his or her staff and shall be confidential.

(3) Any access to such criminal history information shall be made in accordance with applicable laws, conditions, and limits imposed by the providing enforcement agency.

(4) The Commissioner may determine, in his or her sole discretion, whether the identity of a confidential informer shall be disclosed. The Commissioner shall take into account the public interest and the safety and security of the confidential informer.

Authority: O.C.G.A. Secs. 10-5-70, 10-5-71.